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September 12, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Suite 222
Washington, D.C. 20554

Re: CC Docket 94-54 / RM 8012

Dear Mr. Caton

Attached hereto for filing in the above-captioned proceeding are an original and nine copies of the Comments of The National Cellular Resellers Association. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Very truly yours

William B. Wilhelm, Jr.

Enclosures

4919.1

BEFORE THE

Federal Communications Commission

In the Matter of:	)	
	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to Commercial	)	RM-8012
Mobile Radio Services	)	
	)	
	)	

COMMENTS OF THE NATIONAL CELLULAR RESELLERS ASSOCIATION

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Dated: September 12, 1994

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SUMMARY

The statutory deadline requiring the promulgation of CMRS interconnection rules has passed. Although the Commission has indicated its willingness to "entertain" requests to order CMRS interconnection, the National Cellular Resellers Association ("NCRA") recommends that, in the absence of detailed rules, the Commission issue simple guidelines and terms to be followed by CMRS providers making or receiving interconnection requests. Any further delay in the issuance of rules or interim guidelines unnecessarily extends the ability of cellular licensees to rely upon the pretext of the absence of explicit rules to refuse to grant reasonable interconnection requests.

NCRA strongly urges the Commission to rapidly adopt rules requiring CMRS interconnection. The promulgation of explicit rules will fulfill the Commission's statutory obligation, further the public interest and facilitate affordable access to a ubiquitous wireless telecommunications network. In creating detailed guidelines for CMRS interconnection, it is appropriate to place upon the party objecting to an interconnection request the burden of proving that the proposed arrangement would be technically or economically infeasible. Rates charged to interconnecting parties for airtime should be cost-based and unbundled from the charges for other services.

NCRA notes that CMRS interconnection tariffs are statutorily required under Section 332 of the Communications Act. Additionally, it would be impractical and injurious for scores of parties to attempt to simultaneously negotiate LEC and CMRS interconnection terms and rates. Tariffed terms and rates would eliminate administrative costs and reduce the potential for discrimination or delay in establishing requested interconnection.

Furthermore, the Commission should impose resale obligations on all classes of CMRS providers. Because the Commission cannot predict the growth and development of various CMRS services, it is best to avoid imposing any resale restrictions at this time.

Lastly, in the event the Commission takes no action to promulgate CMRS-CMRS interconnection it should not preempt state regulation of interconnection arrangements as a matter of both law and policy.

BEFORE THE

Federal Communications Commission

In the Matter of:	)	
	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	
	)	

To: The Commission

COMMENTS OF THE NATIONAL CELLULAR RESELLERS ASSOCIATION

The National Cellular Resellers Association ("NCRA"), by its attorneys, hereby submits its Comments in response to the Notice of Proposed Rulemaking and Notice of Inquiry ("Notice") released July 1, 1994 in the above-captioned proceeding.[1/] NCRA's members comprise resellers of cellular service in major markets across the country. The Association's objectives include supporting the growth and availability of commercial mobile radio services ("CMRS") for individuals and business and ensuring a competitive marketplace for such services through the promotion of resale activities.

NCRA addresses the following issues in response to the Commission's Notice: (1) the implementation of procedures to expedite CMRS interconnection; (2) the legal requirement for CMRS interconnection; (3) the public policy benefits of cellular-CMRS interconnection; (4) the

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[1/] In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54 (released July 1, 1994) (Notice).

rates, terms, and conditions for CMRS interconnection; (5) LEC and CMRS tariffing; (6) CMRS resale obligations; and (7) state preemption.

As NCRA has previously urged to the Commission, the ability of cellular resellers to install their own switching equipment between the cellular network's mobile telephone switching office ("MTSO") and the facilities of the local exchange carrier and interexchange carriers ("IXCs") will foster the development of a competitive CMRS marketplace.[2/] There are significant public policy benefits to be realized from switch-based resale in the cellular industry including a reduction in price and an increase in the number of service providers and service offerings available to consumers. Congress recognized the importance of these goals by legally requiring CMRS providers to grant interconnection, upon reasonable request, to other CMRS providers.[3/]

Although switched-based CMRS resale is in the public interest, required by law, and technologically feasible,[4/] facilities-based cellular carriers have refused to permit reseller interconnection.[5/] Exercising bottleneck control over facilities essential to the provision of cellular service, cellular carriers correctly view reseller interconnection as a threat to their market power and, as such, have no incentive to grant interconnection. In this regard, cellular resellers are as frustrated

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[2/] See e.g., NCRA Ex Parte Letter, GN Docket 93-252 (filed Jan. 6, 1994).

[3/] See infra Section II.

[4/] See general description of switched reseller interconnection (Attached hereto as Exhibit A).

[5/] See e.g., Parkway Paging v. Southwestern Bell Mobile Systems, Response to Informal Complaint (Attached hereto as Exhibit B). Since Southwestern's reply, the California PUC conducted an extensive review of cellular carrier dominance and market-power and has authorized carriers to grant reseller switched interconnection. Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications, I.93-12-007, (Decision 94-08-022, released August 3, 1994).

in their efforts to gain physical interconnection as were competitive access providers ("CAPs") in their efforts to gain expanded interconnection with LEC facilities.[6/]

The Commission has so far failed to implement its statutory obligation to recognize the rights of CMRS providers to interconnect, upon reasonable request, with other CMRS providers. Instead, the Commission has chosen to issue a Notice of Inquiry to explore the public interest benefits of mandating CMRS to CMRS interconnection as if the statutory obligations and deadlines do not exist. At the conclusion of the NOI precise rules may not be adopted until followed by a formal Notice of Proposed Rulemaking. The NOI will thus extend unnecessarily the ability of cellular licensees to rely upon the pretext of the absence of explicit rules to refuse to grant reasonable interconnection requests.

The Commission has stated in the Notice herein that it will "entertain" requests to order interconnection on a case-by-case basis until generic rules are adopted.[7/] While this is a commendable step, at best it promises to embroil those seeking interconnection in further expensive and complex procedural delays while the carriers argue that they should not be forced to respond to interconnection requests until specific rules are in place. It was precisely to eliminate such tactics

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[6/]Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 F.C.C. Rcd. 7369 (1992) ("Special Access Expanded Interconnection Order"), recon., 8 F.C.C. Rcd. 127 (1992), vacated in part and remanded sub nom. Bell Atlantic v. FCC, No. 92-1619 (D.C. Cir., June 10, 1994); recon., 8 F.C.C. Rcd. 7341 (1993); Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Transport Phase I, Second Report and Order and Third Notice of Proposed Rulemaking, 8 F.C.C. Rcd. 7374 (1993).

[7/]Notice at ¶ 122 fn. 213.

and to achieve promptly the clear public benefits of reasonable interconnection that Congress required the Commission to adopt interconnection rules by August 10, 1994.[8/]

NCRA strongly supports the prompt establishment of rules governing CMRS interconnection obligations. NCRA maintains that a forceful statement of these interconnection obligations and the promulgation of precise rules will satisfy the Commission's statutory mandate, fulfill its public interest obligation, and facilitate the development of a ubiquitous wireless telecommunications network. In this regard, NCRA must echo the earlier comments of McCaw when it stated:

> Policy statements alone, unfortunately, are not sufficient to ensure that the public will benefit, or even that the desired interconnection will occur ... That history equally illustrates that Commission policy pronouncements are not sufficient to realize competitive goals if implementation is left to negotiations between ... competitors. Only by mandating the interconnection standards in detail and closely supervising the implementation process can the Commission ensure that its policies will be correctly implemented and its goals realized.[9/]

Indeed, detailed regulations and close supervision and enforcement of interconnection obligations, particularly at the outset, will ensure that the public will rapidly receive the many benefits afforded by the Commission's regulatory efforts. In these Comments NCRA will suggest a number of procedural steps the Commission should immediately take to ameliorate the damage done by its failure to meet the August 10, 1994 deadline for adopting interconnection rules.

[8/]See Petition for Reconsideration of the National Cellular Resellers Association, GN Docket 93-252, pp. 2-11 (filed May 19, 1994) (NCRA Recon.).

[9/]Reply Comments of McCaw Cellular Communications, Inc., CC Docket No. 91-141 (Sept. 20, 1991).

NCRA also strongly opposes any limitation on CMRS resale. Unrestricted resale is vital to a fully competitive CMRS marketplace. While NCRA shares the Commission's hope that personal communications services ("PCS") and enhanced specialized mobile radio ("ESMR") will bring robust competition to the CMRS marketplace, there is no guarantee this will occur. Indeed, considering the scarcity of radio spectrum, communications policy should be designed to eliminate any possibility that facilities-based CMRS will consist of a handful of oligopolists with market power to charge supracompetitive prices. Commission policy with regard to CMRS competition should ensure that a mix of service providers -- facilities-based carriers, switch-based resellers, and switchless resellers -- compete for end users. This combination has been effective in the long distance arena in creating a competitive marketplace and should be equally as effective in CMRS.

I. The Commission Should Implement Appropriate Procedural Steps to Rectify Its Failure to Comply With The Statutory Deadlines for CMRS Interconnection Contained in The Omnibus Budget Reconciliation Act.

As setforth above, the issuance of the Notice of Inquiry on the question of CMRS to CMRS interconnection promises to delay to a significant degree the adoption of rules to implement the statutory interconnection obligations under Section 332(c)(1)(B) and Section 201(a) of the Communications Act.

However, the Commission has a number of procedural means to collapse the time frame within which the benefits of interconnection can be achieved and the basic legal error amieliorated. First, it can convert the Notice of Inquiry in this proceeding to a Notice of Rulemaking on the question of requiring, by rule, facilities-based cellular carriers and similarly situated CMRS

competitors like broadband PCS and ESMR, to interconnect their facilities, upon reasonable request, to the switches of resellers and other common carriers that desire to interconnect on a prompt basis.

Secondly, NCRA has filed a Petition for Reconsideration of the Commission's Second Report and Order in GN Docket No. 93-252. NCRA contended to the Commission that it had improperly failed to adopt specific rules governing CMRS to CMRS interconnection by the August 10, 1994 deadline. That Docket is still open and available for the adoption of specific rules that would articulate the precise duty of CMRS providers to honor reasonable interconnection requests by other CMRS providers, including switch-based resellers.

Third, the Commission should, in any event, issue a Public Notice expanding upon the inchoate obligations inherent in its willingness to "entertain any requests to order interconnection pursuant to Section 332(c)(1)(B) on a case-by-case basis."[10/] What needs to be made explicit is that CMRS licensees must, in good faith, now negotiate interconnection arrangements even in the absence of the adoption of specific interconnection rules. A proposed form of such a Public Notice would read as follows:

Public Notice Regarding Interim
Proposed FCC CMRS Interconnection Obligations

A - All CMRS licensees and providers, including resellers, are subject to the provisions of this Public Notice pending completion of the proceedings in CC Docket No. 94-54.

1 - Upon reasonable request, CMRS providers shall permit interconnection of their facilities to any other common carrier or PMRS licensee upon terms that are technically and economically feasible. The party making the request for interconnection shall pay for the direct costs associated with implementing such

[10/] Notice at ¶ 122 fn. 213.

interconnection. Ongoing charges for interconnected service shall be just, reasonable, and non-discriminatory. All charges for such service shall be offered on an unbundled basis with the charge for each ordered service element separately stated.

2 - Requests for interconnected service shall describe with particularity the proposed arrangement, the qualifications of the party requesting interconnection, and the manner in which the service will be utilized. No request for such service need be granted that is not technically feasible or which would impose on the requested CMRS provider cognizable irreparable economic hardship.

3 - Every CMRS provider upon whom a request for interconnected service is made shall respond in writing within 45 days of the receipt of the request. A refusal to grant interconnected service shall state with particularity the technical and/or economic grounds upon which the refusal is grounded.

4 - This Public Notice is issued pursuant to Sections 4(i) and 332(c)(1)(B) of the Communications Act. A CMRS provider's failure to respond to requests for interconnection within the 45 days set forth herein or honor "reasonable" requests shall be reviewable by the Commission upon complaint under Section 208 and subject to the sanctions and forfeitures of Title V of the Communications Act.

Adoption of the above procedures would protect the rights of parties to comment upon the precise rules to be adopted, eliminate the delay inherent in the bifurcated notice procedure the Commission has chosen to follow, and expedite the time when competitive markets in at least the existing portion of the CMRS marketplace -- the cellular area -- could be achieved. NCRA herewith sets forth its views on some of the precise questions the Commission has requested comment but wishes to make plain that the first and most important and critical task is not to permit the instant proceedings to delay the time when the cellular marketplace can reach competitive status.

II. Section 332(c)(1)(B) Requires CMRS - CMRS Interconnection

Section 332(c)(1)(B) requires all common carriers to interconnect with CMRS providers.[11/] Since CMRS providers are, by statute, classified as common carriers, Section 332(c)(1)(B) clearly obligates CMRS providers to interconnect to other CMRS providers. Furthermore, the Commission was obligated to promulgate interconnection regulations by August 10, 1994.[12/] The argument that Section 332(c)(1)(B)'s reference to Section 201 permits the Commission to retain discretion over the interconnection obligations of common carriers to CMRS providers is, for several reasons, groundless. First, the interpretation improperly renders Section 332(c)(1)(B) superfluous -- nothing more than a reiteration of the existing discretion afforded the Commission under Section 201. Such an interpretation is in conflict with the rules of statutory construction.[13/] Furthermore, Section 332(c)(1)(B) does not simply state that "this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act." On the contrary, the sentence begins by stating that the subparagraph shall not be construed as a limitation or expansion of existing authority "[e]xcept to the extent that the Commission is required to respond

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[11/] Section 332(c)(1)(B) states "upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical interconnection with such service pursuant to the provisions of Section 201 of this Act." Section 332(c)(1)(A) states that "A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is engaged, be treated as a common carrier for purposes of this Act." As both common carriers and CMRS providers, switch-based cellular resellers would be required to provide interconnection with all other CMRS providers upon reasonable request.

[12/] See NCRA Recon. at pp. 2-5.

[13/] Platt v. Union Pacific Railroad Co., 99 U.S. 48, 58 (1878).

to a[n] [interconnection] request." Thus, to interpret Section 332(c)(1)(B) as not requiring CMRS-CMRS interconnection would render this clause meaningless.

III. A Public Interest Analysis Under Section 201 Supports Imposition of CMRS Interconnection Obligations on Licensed Cellular Carriers

Although the Notice addresses the interconnection obligations of CMRS providers with respect to interexchange carriers (i.e., equal access) and other CMRS providers separately, the factors which led the Commission to conclude that the imposition of equal access obligations on cellular carriers is in the public interest can only lead the Commission to reach the same conclusion regarding the interconnection obligations of cellular carriers with respect to other CMRS providers.

A. Cellular Licensees Exercise Bottleneck Control Over Cellular Facilities

In determining whether to impose equal access obligations on CMRS providers, the Commission examined the market power of various CMRS providers as well as whether equal access would serve other policy goals. Clearly, however, market power was of primary consideration. As the Commission points out in the Notice:

> The presence or absence of market power is an important factor in determining whether the imposition of equal access obligations on CMRS providers may be in the public interest. In the past, we have imposed interconnection obligations where the market was not sufficiently competitive to ensure that Commission goals of promoting consumer choice of carrier and competitive service offerings were attained. Carriers possessing market power might deny interconnection and thereby preclude another carrier from

> gaining access to the public switched network and competing to serve end users.[14/]

While these words appeared in the equal access portion of the Notice, they accurately describe the Commission's general policy regarding the interconnection obligations of common carriers. In short, the Commission believes it is in the public interest to impose interconnection where market forces alone cannot be relied upon to give competitors access to specific networks. In tentatively concluding that equal access obligations should be imposed on licensed cellular carriers, but no other CMRS providers, the Commission essentially found that only cellular licensees among all CMRS providers possess sufficient market power to deny interexchange carriers access to cellular networks and, conversely, cellular subscribers access to the interexchange carrier of their choice.

The Department of Justice ("DOJ") provides compelling support for this conclusion.[15/] After completing, in its own words, an "extensive investigation into the cellular industry," DOJ reached the following conclusions: cellular exchange service markets are not competitive,[16/] cellular duopolists have substantial market power[17/] and cellular carriers exercise bottleneck control over their licensed facilities.[18/] These findings, by the agency of the Federal Government primarily

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[14/]Notice at ¶ 32.

[15/]See United States v. Western Elec., Memorandum of the United States in Response to Bell Companies' Motions for Generic Wireless Waivers, Civ. Action No. 82-0192 (filed July 25, 1994) (DOJ) (Attached hereto with exhibits as Exhibits C & D respectively).

[16/]Id. at 14-19.

[17/]Id. at 13.

[18/]Id. at 10.

charged with enforcement of the antitrust laws are due the highest degree of deference by the Commission.

Additionally, various internal corporate documents publicly released by DOJ not only evince the extent to which cellular carriers enjoy supracompetitive profits and exercise bottleneck control over essential facilities but, disturbingly, also the extent to which cellular licensees have misrepresented themselves in various Commission and court proceedings addressing these issues.[19/]

The DOJ investigation thus confirms that cellular licensees possess market power. This market power can be used by cellular licensees not only to deny network access to interexchange carriers but to CMRS providers, including resellers. Hence, the market findings underlying the Commission's decision to impose equal access obligations on cellular licensees -- which are backed firmly by the DOJ investigation -- also support the imposition of interconnection obligations on cellular licensees with regard to all CMRS providers, including resellers.

[19/] Compare e.g., Comments of Southwestern Bell Corporation, GN Docket No. 93-252 at 7 (filed November 23, 1993) stating that "[t]he market for wireless services has grown increasingly competitive with the advent of wide area SMRs" with DOJ Exhibits, Exhibit 5 (showing internal SWB documents projecting that "ESMR will initially present a weak threat, mainly due to unproven technology, lack of ubiquity and roaming limitations"); compare also Reply Comments of Pactel Corporation, GN Docket 93-252 at 2 (filed November 23, 1993) (stating that "NCRA's old claims regarding lack of competition in the cellular industry are simply incorrect given today's competitive cellular marketplace") with DOJ at 16 (citing Pactel internal documents stating "Cellular industry -- unusually attractive structural characteristics -- government-mandated duopoly providing very high barriers to entry -- essentially unregulated with regard to rates and rate of return ... overall competitive rivalry is low to moderate ... to date little competition on service pricing"). See also DOJ at 16 (noting that U.S. West filed a waiver before the District Court stating that cellular was "robustly competitive" while observing internally six months later in June 1992 that the "current duopoly structure and market growth limits competitive intensity."

B. Cellular-to-CMRS Interconnection Will Produce Significant Public Benefits

Requiring cellular carriers to interconnect with other CMRS providers at just and reasonable rates will produce consumer benefits similar to those anticipated from the Commission's Expanded Interconnection proceeding.[20/] Competitive access providers combine certain facilities of local exchange carriers with their own facilities to create independent networks which compete directly with LECs in terms of price, features, and quality. Switch-based resellers would operate on a similar basis and serve a similar competitive function in the cellular marketplace.

Switch-based cellular resellers with access to unbundled service elements at just and reasonable rates would be far less vulnerable to carrier market power. The Commission's current cellular resale and tariffing policies do little to make resellers competitive with licensed carriers. There is simply no mechanism, outside of the cumbersome and ineffective Section 208 complaint process, to ensure that resellers have access to rates that are just and reasonable and nondiscriminatory. As a result, licensed carriers have the ability to neutralize resellers as a

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[20/]The Commission stated that "expanded interconnection should increase LEC incentives for efficiency and encourage LECs to deploy new technologies facilitating innovative service offerings. It also should make the LECs more responsive to customers in providing existing services. Moreover, we believe that in many areas of the country, expanded interconnection will increase the choices available to access customers who value redundancy and route diversity. Network outages have increased awareness that even partial alternatives to the LEC networks may be valuable. In addition, increased competition will tend to reduce prices for services available from both the LECs and alternative suppliers." Special Access Expanded Interconnection Order at ¶ 14.

competitive alternative in the market place.[21/] Indeed, it is no accident that resellers are nonexistent in the vast majority of cellular markets.

Interconnection and access to unbundled service elements would dramatically improve the viability of cellular resale and thus increase the number of cellular resellers offering service to the public. These additional service providers will increase customer choice, and be capable of lowering consumer prices, accelerating the development of new services, and increasing access to alternative networks.

1. Customer Choice.

As explained above, NCRA believes that cellular interconnection will foster the development of CMRS resellers. It will also enahnce the viability of facilities-based CMRS providers and thereby increase the overall number of CMRS carriers from which customers may choose to obtain service. As Commission staff person David P. Reed points out in his report Putting it All Together: The Cost Structure of Personal Communications Services (November, 1992):

[21/] See also United States v. AT&T, Complaint of the Department of Justice, Civ. Action No. 1:94CV01555 (filed July 15, 1994). In their complaint, DOJ stated: "Cellular service is a relevant product market. The relevant geographic markets are those service areas in which the FCC has licensed two facilities-based cellular carriers to provide cellular service. At the current time, the holders of these cellular licenses, including McCaw, exercise market power in the provision of cellular service. These duopolies are characterized by rapidly growing demand and minimal price competition resulting in high margins to cellular carriers. While the Commission's rules permit other parties to purchase cellular service wholesale and to resell the services of the two licensed carriers in each service area, resellers have not had substantial ability to influence wholesale pricing and accordingly have not substantially stimulated price competition for cellular services." Id. at ¶ 11 (emphasis added). See also Comments of Allnet Communications Services, Affidavit of Greg Jones, Attachment 1, CC Docket 94-54 (filed August 30, 1994).

> [A]n entrepreneur or small company that obtains a PCS license but does not own any existing infrastructure in the subscriber loop -- probably would not choose to construct its own separate PCS network. Results indicate the fixed costs of a PCS network using very small radio cells are high in relation to the fixed costs of providing PCS using existing infrastructure. This cost differential is especially dramatic at the low levels of penetration which will be expected during early deployment. Thus, independent providers are likely to pursue a strategy of negotiating alliances among infrastructure alternative available to deliver PCS.[22/]

The Commission already requires local exchange carriers to interconnect with CMRS providers, which will help give PCS licensees access to existing infrastructure to complete their networks. But cellular carriers also control vital infrastructure, and unless the Commission recognizes the right of CMRS providers, including PCS licensees, to utilize these facilities, the established cellular carriers may very well decide it is in their best interests to deny interconnection to them and thus frustrate the deployment of competitive PCS.

2. Lower Consumer Prices.

Since switch-based resellers should pay cost-based rates for carrying a call from the mobile unit to the MTSO and from the MTSO to the reseller's switch, resellers will be able to enhance price competition in several significant ways. First and most obvious, they will be able to offer rates significantly lower than the carriers' current supracompetitive prices since airtime charges will be unbundled and cost-based. Secondly, they will also be able to offer customers lower charges for ancillary services. As the DOJ investigation determined, carriers often impose rate increases by

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[22/]David P. Reed, Putting it Together: The Cost Structure of Personal Communications Services, p. vii (November, 1993).

aggressively increasing non-airtime charges such as those for voice-mail, detailed billing, and call forwarding.[23/] By performing their own switching, resellers could offer these services at market rates rather than at the monopolistic rates charged by the carriers when these services are tied ("bundled") to airtime access charges.

Finally, switch-based resellers will stimulate competition for roaming subscribers and virtually assure lower roaming rates which today often exceed $2.50 in daily access charges and $.75 per minute. Presently, cellular resellers cannot compete in the roaming arena because they have no ability to provide service to roamers independent of the underlying carrier. This would change, however, with the advent of switch-based cellular resellers. Once resellers gain interconnection, they can route roamer calls to the public switched telephone network ("PSTN") in much the same way as the underlying carrier. Switch-based resellers can enter into separate roaming agreements with outside carriers or other resellers and merely instruct the underlying carriers to route all calls from carriers with whom they have agreements to their reseller switches. Resellers would then route the call to the PSTN charging the roaming customer a competitive rate.

3. Accelerated Development of Enhanced Services

The opportunity to interconnect with cellular carriers will enable resellers to utilize their own switch. Since the provision of enhanced services depends upon switch-programmed functions, switch-based resellers will be able to offer their customers detailed-billing, voice-mail, enhanced call forwarding and distinctive ring functions which other carriers may not provide or may provide at non-

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[23/] See DOJ at 16-18.

competitive rates. As developments in switch technology advance, resellers will offer more advanced services. Furthermore, resellers could combine these enhanced functions to compete for niche markets whose needs the carriers do not currently address.

4. Access to Networks

Because switch-based resellers will, for the first time, be able to compete with cellular carriers for the provision of switching and local transport, resellers will have incentive to switch calls in the most efficient fashion. In an effort to reduce transport costs, resellers will utilize intelligent switching and will seek the transport services of CAPs, microwave carriers, and other facilities-based CMRS providers. The resulting cost reductions will, no doubt, force cellular carriers to seek similar alternative transport arrangements. It is therefore foreseeable that competition in the CMRS marketplace for low cost local transport will lead to further competition and downward price pressure in both the CMRS and local exchange markets.

IV. The Rates, Terms and Conditions of Interconnection

The Commission seeks comments on the terms, conditions and rates for interconnection. NCRA maintains that Section 332(c)(1)(B) requires interconnection upon "reasonable request." NCRA submits that all interconnection arrangements that are technically and economically feasible should be considered reasonable. NCRA recommends that the party requesting interconnection pay costs directly related to interconnection. Such direct costs would include costs related to the installation of additional switching equipment or ports at the MTSO. The interconnecting party should not be responsible for the costs of increasing network capacity, such as the construction of additional

cell sites since these costs would be recovered through the carriers' airtime service revenues. Furthermore, NCRA maintains that parties alleging technical or economic infeasibility be required to demonstrate the existence of such conditions by a clear preponderance of the evidence.

It is particularly appropriate to place on the party objecting to an interconnection request the burden of proving that it is economically or technically infeasible. A CMRS provider requesting interconnection has no incentive to propose an arrangement that is not technically feasible or might fatally damage the financial ability of the carrier upon whom it must rely to provide physical facilities. On the other hand, cellular carriers have strong incentives to refuse interconnection because of the threat such requests pose to carrier bottleneck control and market power. This attitude will not likely change but may be modified to assert specious and dilatory claims of financial or technical interconnection difficulties. The Commission must make plain that a carrier's failure to timely negotiate interconnection arrangements in good faith will reflect on the character qualification necessary to maintain licensed radio common carrier status. All CMRS providers should also be put on notice that a finding of bad faith will subject such carriers to administrative sanctions and damages to third parties occasioned by dilatory and obstructive behavior.

Finally, to achieve the aforementioned benefits, the Commission should require carriers to charge interconnecting parties reasonable, unbundled, cost-based rates. As the Commission stated in a Reconsideration of its Expanded Interconnection Order:

> [I]n order for a rate structure to be considered reasonable ... the rate structures are to reflect cost causation principles, i.e., the manner in which costs are incurred in providing expanded interconnection services. In addition, the LECs are to unbundle their rate structures, in order to ensure that interconnectors are not forced to pay for services that they do not need. Unbundling also will improve the Commission's ability to scrutinize filed rates to prevent anticompetitive pricing and

> discrimination. This approach will provide all parties with more specific principles by which to evaluate the reasonableness of expanded interconnection rate structures.[24/]

The Commission should clearly adopt similar standards of "reasonableness" for CMRS-CMRS interconnection and rates.

V. LEC and CMRS Tariffing

The Commission seeks comment on LEC and CMRS interconnection tariffs.[25/] First the Commission asks whether it should require LECs to offer interconnection to CMRS providers under tariff pursuant to Section 203, or whether it should retain the current requirement that LECs establish rates through good faith negotiations.[26/] Additionally, the Commission seeks comment on whether it should require CMRS providers to tariff the rates for their interconnection arrangements, or if not, whether such a decision can rely upon the Commission's Section 332(c)(3) forbearance authority.[27/] NCRA maintains that the Commission should require LECs and CMRS providers to file interconnection tariffs. NCRA believes that, in both instances, the benefits of such filings would outweigh the costs and is, in any event, legally mandated.

With regard to cellular CMRS interconnection tariffs, Section 332(c)(1) does not permit forbearance. To forbear from tariffing, Section 332 requires that the Commission find that:

[24/]Expanded Interconnection with Local Telephone Company Facilities, Second Memorandum Opinion and Order on Reconsideration, 8 F.C.C. Rcd. 7341, ¶ 61 (1993).

[25/]Notice at ¶ 113, 131.

[26/]Id. at ¶ 113.

[27/]Id. at ¶ 131.

> (1) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such provision is not necessary for the protection of consumers; and (3) specifying such provision is consistent with the public interest.

Because cellular licensees are dominant carriers whose charges may not be presumed to be lawful, the Commission can not rightfully forebear from tariffing the service rates or interconnection charges of these carriers. Furthermore, because evidence of cellular carriers' market power and control of bottleneck facilities is overwhelming, enforcement of cellular interconnection tariffs is necessary for the protection of parties requesting interconnection, even if such forbearance was permitted under the Communications Act, which it is not.[28/]

NCRA shares other commentors concern that LECs with competing PCS or CMRS systems may have incentive to discriminate.[29/] Although NCRA believes that the filing of contractual information and the adoption of a most favored nation requirement would help, in part, to remedy these concerns, such requirements would ignore the existing statutory obligation to tariff these rates. Moreover, tariffing is the most effective way of assuring that these rates are fair, reasonable, and non-discriminatory.

[28/] As the Supreme Court recently stated, "[t]he tariff-filing requirement is the heart of the common-carrier section of the Communications Act ... this Court has repeatedly stressed that rate filing was Congress's chosen means of preventing unreasonable and discrimination in charges." MCI v. AT&T, 114 S.Ct. 2223, 2231 (1994). Since cellular carriers are dominant carriers whose charges may not be presumed lawful, any detariffing of these carriers' rates is clearly impermissible. See NCRA Recon. at 16-19. It is also clear that the tariffs cellular carriers are required to file must be of detail "[]sufficient to support a reliable calculation of charges." Security Services, Inc. v. Kmart Corp., 114 S.Ct. 1702, 1710 (1994).

[29/] Notice at ¶ 109 (citing concerns of Pagemart, Comcast and Cox).

Tariffing would also make sense as a practical matter. NCRA notes the difficulty that the cellular carriers originally had in negotiating interconnection arrangements with the LEC. If "good faith" negotiations were attempted, either with the LEC or among CMRS providers, NCRA envisions scores of CMRS carriers engaged in simultaneous efforts to negotiate fair interconnection arrangements. The administrative burden of these simultaneous negotiations would be staggering. Such conditions would likely place an unreasonable burden upon the LEC and established CMRS providers. There would clearly be overwhelming administrative and transactional costs placed upon smaller CMRS providers as they attempted to negotiate with the LEC and other CMRS providers. Indeed, NCRA notes that should difficulties arise during negotiations, it is not likely that Commission staff will have the time to act as informal participants as was true when cellular carriers negotiated interconnection terms with the LEC. Additionally, NCRA is concerned that negotiations would lead to unreasonable delay, or unfair preferences in the timing or terms of interconnection.

VI. Resale Obligations

NCRA strongly recommends that the Commission continue to encourage and require resale across all classes of CMRS. The imposition of resale obligations upon all CMRS providers is essential to the development of a competitive marketplace. The Commission has found that a strong resale market for cellular service fosters competition.[30/] Moreover, the failure to prohibit resale restrictions by CMRS providers would undermine the underlying policy goals of spectrum caps. Without unrestricted resale, facilities-based cellular carriers could enter into exclusive resale agreements with

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[30/] Notice at ¶ 138.